

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. :

CRIMINAL NO. 1:CR-00-052-01
(Judge Kane)

DEBORAH FETTERHOLF, :
Defendant

TRANSCRIPT OF PROCEEDINGS

SENTENCING

Before: Hon. Yvette Kane, Judge

Date: January 5, 2001

Place: Courtroom No. 4
Federal Building
Harrisburg, Pa.

FILED
HARRISBURG, PA

JUL 21 2004

MARY E. D'ANDREA, CLERK
Per M. E. D'Andrea
Deputy Clerk

COUNSEL PRESENT:

WILLIAM A. BEHE, Assistant U.S. Attorney

For - Government

SPERO T. LAPPAS, Esquire

For - Defendant

Monica L. Zamiska, RPR
Official Court Reporter

1 MR. BEHE: Your Honor, with the Court's permission
2 I would call the following matter; that is, the United States
3 of America v. Deborah Fetterolf. This is docketed to
4 Criminal No. 00-052. May the record reflect that Miss
5 Fetterolf is present before you with her counsel Mr. Lappas,
6 and now is the time and place set for sentencing in this
7 matter.

8 The United States has filed a motion for guideline
9 departure pursuant to Section 5K1.1 of the guidelines. I
10 would like to point out to Your Honor that there is a mistake
11 in that motion on page 2, paragraph 3, the seventh line down
12 where it says to trial the week of August 8, 2000. I
13 mistakenly put the name Steckbeck down, it should be Miss
14 Fetterolf's name, she's the one who provided substantial
15 information. That may have affected Your Honor's reading of
16 it because it was not Janice Steckbeck, it was the defendant
17 here. It was an oversight on my part that I didn't catch
18 that, but she did provide substantial information.

19 THE COURT: I understand from the motion that the
20 defendant is also providing information to local law
21 enforcement authorities.

22 MR. BEHE: Yes.

23 THE COURT: Is that in Dauphin County?

24 MR. BEHE: Yes.

25 THE COURT: Okay. Mr. Lappas, do you have a copy

1 of Mr. Behe's motion and also the report of the probation
2 office calculating a total offense level 15 and criminal
3 history category I?

4 MR. LAPPAS: That is correct, Your Honor. We have
5 received the presentence report, reviewed it with -- I have
6 reviewed it with my client, and the Court would have through
7 the probation office our November 3, 2000 letter of
8 objections which were eventually decided by the probation
9 officer.

10 The only substantial objection, Your Honor, deals
11 with the enhancement for role in the offense, and I think and
12 hope that the government's 5K1 motion and remarks that I plan
13 to make today may obviate the need to rule on that objection,
14 so if I might move right to the issue of departure.

15 THE COURT: Uh-huh.

16 MR. LAPPAS: I received this motion yesterday, Your
17 Honor, as the day it was filed, Mr. Behe promptly faxed me a
18 copy of it, and in reading it over I must say that in all the
19 times that I have represented cooperating defendants in
20 federal cases or in fact in state cases, this was -- this
21 motion reveals a level of cooperation and help which is
22 almost unprecedented in my experience. Quoting from
23 paragraph 5 on page 3 of the motion Mr. Behe states correctly
24 I believe that the defendant has complied with every request
25 made by the United States, promptly forfeited \$10,000 to the

1 United States as required by the plea agreement and is
2 willing to assist the law enforcement agencies in the
3 investigation of other massage parlors.

4 It also true, as Your Honor will no doubt recall
5 from her own recollection of the events in question, that
6 Miss Steckbeck and Mr. Hamer were prepared and my impression
7 was adamantly desirous of proceeding to trial. On the day we
8 picked the jury in fact their counsel were I think intending
9 to and certainly could have mounted a vigorous and perhaps
10 effective defense. What changed that all was the knowledge
11 that was revealed to counsel for the other defendants in Your
12 Honor's chambers, if I remember correctly, that Miss
13 Fetterolf was now cooperating. Although we did pick a jury
14 because of scheduling constraints, as soon as the other
15 defendants realized that Deborah Fetterolf was cooperating,
16 they pleaded guilty or indicated their desire to plead
17 guilty, I think even that very week. So her cooperation has
18 not only been extensive, and in fact, as Mr. Behe said, she's
19 complied with every condition, every desire he imposed upon
20 her, but it's been effective.

21 This is not a case to which she cooperated to no
22 effect, her cooperation has already borne fruit, and I
23 believe the government would agree that it is likely to bear
24 further fruit in the future.

25 Now that puts us I think in a situation where not

1 only is she entitled to the departure which we have seen
2 recommended by Mr. Behe's motion, but also I think this
3 raises a Leiberman case in which Miss Fetterolf by her
4 actions has demonstrated an exceptionally high level of
5 acceptance of responsibility. She forfeited \$10,000 almost
6 immediately upon executing the plea agreement. We were
7 served through my office a matter of weeks ago with the
8 forfeiture complaint, which we did not answer, of course, in
9 light of her plea agreement. She has spent I believe many
10 hours with various investigators and again provided
11 information which can only be described as extensive.

12 Now Mr. Behe has recommended a sentence of 12
13 months and a day. My request is this, that Your Honor
14 sentence Deborah Fetterolf in the 6 to 12 month range, which
15 is only a slight reduction from what the government has
16 requested, and I suggest that that reduction is proper under
17 the Leiberman standard. A sentence of between 6 and 12
18 months could, with Your Honor's order, which I request, place
19 her in Zone B of the guideline sentencing table. Under
20 5C1.1(c)(3) she could then receive a sentence of probation
21 that includes as a condition that period of intermittent
22 confinement or essentially work release or home detention be
23 substituted for imprisonment.

24 I think that if Your Honor read, as I'm sure you
25 did, Miss Fetterolf's letter to the probation officer and to

1 you, it reveals an unusually eloquent statement of contrition
2 and a sincere one. She and I worked on that letter for
3 hours, and I can tell you that every statement in there was
4 her heartfelt expression of contrition.

5 She has literally turned her life around by virtue
6 of this prosecution, which it's too bad that it had to happen
7 this way, but unfortunately it did happen.

8 She has since her plea she tells me started her own
9 janitorial service business. So she does have gainful
10 employment that she could perform in the event that the Court
11 sentences along the lines that I have requested.

12 There is little more that I can say for her beyond
13 what she's said for herself. I think her actions in this
14 matter since pleading guilty speak volumes for the fact that
15 she is a suitable candidate for rehabilitation, and I ask the
16 Court to sentence her under a guideline of 5C1.1(c)(3) to a
17 sentence of work release or home detention. Thank you.

18 THE COURT: Mr. Lappas, just so I'm clear, you
19 indicated that when you started out that maintaining your
20 objections would be somewhat dependent on whether or not the
21 Court would find substantial assistance. Are you preserving
22 the objections that were stated in the original probation
23 report or are you waiving them now?

24 MR. LAPPAS: No, we're not waiving them, Your
25 Honor.

1 THE COURT: Miss Fetterolf, do you have anything
2 you want to say?

3 THE DEFENDANT: Yes, Your Honor. I am truly sorry
4 for how things have worked with the business and everything.
5 The way I see this business today is not the same as I saw it
6 back then. I truly in my heart wanted to help those women
7 and get them out of that type of business, and I was wrong.
8 It was not the right thinking. I have changed my life
9 around, and the only thing that I can say about today is that
10 I have put it in God's hands, and that's where I'm meant to
11 be. Thank you.

12 Mr. Behe.

13 MR. BEHE: Yes, Your Honor, since Mr. Lappas is
14 maintaining his objections, I would just simply state that I
15 believe that the response prepared by the probation officer
16 in this matter Mrs. Regan addresses those objections, and I
17 would ask the Court to adopt the presentence report and the
18 addendum which addresses the objections. Clearly under the
19 facts of this particular case the defendant deserves the 3
20 level enhancement for the role in the offense, and I believe
21 that the objections were addressed by Mrs. Regan.

22 My motion for guideline departure that was filed
23 yesterday is one that I respectfully ask the Court to accept
24 in this matter. I do believe that the straw that broke the
25 camel's back in the Stockbeck and Hamer case was the

1 knowledge that Miss Fetterolf, who although was not charged
2 as a co-conspirator with the two of them, knew them, worked
3 with them, knew of their business, had contacts with them
4 during the investigation, was prepared to testify. The
5 parties would communicate about who might be undercover
6 police officers, all the things that would have just
7 completely stripped the defense of Steckbeck and Hamer, that
8 they did not know what was going on, it was completely away
9 from them, and once the defendants learned of her willingness
10 to testify against them, I think that was what turned the
11 tide, although they pled guilty reluctantly.

12 Secondly, they, unlike Miss Fetterolf, have not
13 agreed to cooperate and have not cooperated, although they
14 certainly have the opportunity to do so and can still do so.

15 And one thing that Mr. Lappas did not mention but
16 it's clear in the presentence report, I do not believe Miss
17 Fetterolf has a criminal record of any sort, and I think that
18 although this particular crime went on for a few years and
19 involved a substantial amount of money, it is a heck of a way
20 to have your first crime. She does not have any criminal
21 history, and I think that speaks to her as well.

22 If Your Honor is going to depart from the guideline
23 range to whatever sentence Your Honor decides to impose if
24 Your Honor doesn't accept their recommendation, unlike Mr.
25 Lappas, I would respectfully request that the sentencing be

1 in Zone C, and that would allow for half in and half out, if
2 I'm not mistaken, in terms of confinement, and those are all
3 the remarks I have.

4 THE COURT: Miss Fetterolf, like the other
5 defendants who appeared before the Court, you present a
6 situation where the Court has difficulty overlooking the fact
7 that you engaged in a criminal episode, a criminal
8 enterprise, that was ongoing, that is very serious, to know
9 that a person every day for eight years of her life went to
10 work every single day knowing that she was violating the law,
11 and that weighs very heavily against the things that your
12 lawyer has said and Mr. Behe has said. However, I am
13 convinced by the letter that you wrote and by the things that
14 Mr. Behe and Mr. Lappas have said that you are truly
15 repentant and that you're not going to be a person who is
16 ever going to appear before this Court again.

17 I also think in evaluating the government's motion
18 for downward depart that the information that you gave was
19 helpful, it was timely, it was substantial.

20 We are here in federal court I think for a reason,
21 local authorities have tried for a long time to get at the
22 criminal conduct that is the subject of these three
23 prosecutions and have had no apparent success doing that, so
24 I think that the information that you've provided to the
25 federal authorities and to local authorities is very

1 important, it's very helpful.

2 I think judging from the conduct and the demeanor
3 of Mr. Hamer, you may have provided that information at some
4 risk to yourself, so I do think weighing against the offense
5 here is a real assistance to the government, and you deserve
6 to be credited for that. For that reason I'm going to depart
7 3 levels to place you in a sentencing range of 10 to 16
8 months. I will recognize the government's recommendation and
9 sentence you to 12 months and 1 day.

10 Pursuant to the Sentencing Reform Act of 1984 it's
11 the judgment of the Court on Count 1 that the defendant
12 Deborah Fetterolf is hereby committed to the custody of the
13 Bureau of Prisons to be imprisoned for a term of 12 months
14 and 1 day.

15 The Court finds that the defendant has the ability
16 to pay a fine, accordingly it's further ordered that the
17 defendant pay to the United States the sum of \$4,100,
18 consisting of a fine of \$4,000 and a special assessment of
19 \$100. The fine and assessment are due immediately, shall be
20 paid through the Clerk of Court and are payable during the
21 period of incarceration with any balance to be paid within 2
22 years of the defendant's release from custody.

23 The Court finds that the defendant does not have
24 the ability to pay interest and waives the interest
25 requirement.

1 Upon release from imprisonment the defendant shall
2 be placed on supervised release for a term of 2 years.

3 Within 72 hours of release from the custody of the
4 Bureau of Prisons the defendant shall report in person to the
5 probation office in the district to which she's released.

6 While on supervised release the defendant shall
7 comply with the standard conditions that have been adopted by
8 the Court and with the following additional conditions: The
9 defendant shall participate in mental health treatment, to
10 include treatment for gambling, as directed by the probation
11 office. The defendant shall pay any balance of the fine
12 imposed by this judgment which remains unpaid at the
13 commencement of the term of supervised release in minimum
14 monthly installments of no less than \$100. As a condition of
15 supervision the defendant shall submit to one drug test
16 within 15 days of release from custody and at least two
17 periodic drug tests thereafter.

18 Miss Fetterolf, you can appeal your conviction if
19 you believe that your guilty plea was somehow unlawful or
20 involuntary or that there is some other fundamental defect in
21 the proceeding that was not waived by your guilty plea.

22 You also have a statutory right to appeal your
23 sentence under certain circumstances, particularly if you
24 think that sentence is contrary to law. With few exceptions
25 any notice of appeal must be filed within 10 days that the

1 sentence is imposed on you.

2 If you are unable to pay the costs of an appeal,
3 you can apply for leave to appeal in forma pauperis. If you
4 so request, the Clerk of Court will prepare and file a notice
5 of appeal on your behalf.

6 The basis for the sentence is as follows: The
7 Court adopts the factual finding and guideline application in
8 the presentence report. The sentence departs from the
9 guideline range upon motion of the government as a result of
10 the defendant's substantial assistance.

11 Mr. Behe, do you have any objection to a voluntary
12 surrender in this case?

13 MR. BEHE: Not at all, Your Honor.

14 THE COURT: Is there a date that you have in mind?

15 MR. BEHE: I do not have any. I don't know whether
16 Mr. Lappas has spoken to his client about how long it would
17 take for her to get her affairs in order.

18 THE COURT: Mr. Lappas.

19 MR. LAPPAS: Thirty days, Your Honor.

20 THE COURT: Miss Kennedy.

21 THE CLERK: February 7.

22 THE COURT: Mr. Behe, is there anything else for
23 the record in this matter?

24 MR. BEHE: Yes, Your Honor, I move to dismiss all
25 remaining counts of the indictment. I believe the defendant

13

pled guilty to Count 1.

THE COURT: All right, the motion is granted.

Anything else, Mr. Lappas?

MR. LAPPAS: No, Your Honor.

THE COURT: We'll be in recess.

(The proceedings concluded.)

I hereby certify that the proceedings and evidence of the court are contained fully and accurately in the notes taken by me on the sentencing of the within cause and that this is a correct transcript of the same.

Monica L. Zamuska

Monica L. Zamiska, RPR

Official Court Reporter